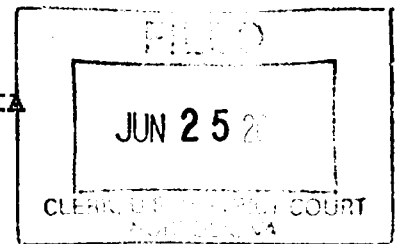


UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division



DION DARNELL WALLER, #320399,

Petitioner,

v.

CIVIL ACTION NO. 2:06cv679

GENE M. JOHNSON, Director of the  
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to petitioner's conviction following his July 1, 2002, guilty plea in the Circuit Court for Stafford County for felony murder and child neglect, as a result of which he was sentenced to serve a total of fifty years in the Virginia penal system with thirty-three years suspended.

The matter was referred to a United States Magistrate Judge, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), Rule 72(b) of the Federal Rules of Civil Procedure, and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia, for report and recommendation. The report of the Magistrate Judge recommending dismissal of the petition was filed on May 29, 2007. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. The Court has received no objections to the

Magistrate Judge's Report and Recommendation and the time for filing same has expired.

The Court hereby ADOPTS the findings and recommendations set forth in the report of the United States Magistrate Judge filed on May 29, 2007, and it is, therefore, ORDERED that the petition be DENIED AND DISMISSED as the claims were never raised in the Virginia state courts and Petitioner has shown no cause for failing to present the claim and no prejudice resulting therefrom, which this Court must find before considering the merits of the claims. Additionally, Petitioner's motion to voluntarily dismiss the petition without prejudice is DENIED. It is further ORDERED that judgment be entered in favor of Respondent.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment. The petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

The Clerk shall mail a copy of this Order to the petitioner and to counsel of record for respondent.

  
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

June 25, 2007